IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

RCRev..No. 351 of 2007()

RCA.10/2004 of ADDL.D.C. & RENT CONTROL APPELLATE AUTHORITY, ,ALAPPUZHA.
RCP.54/2000 of PRINCIPAL MUNSIFF/RENT CONTROL COURT, ,ALAPPUZHA
.....

REVISION PETITIONERS/APPELLANTS/3RD RESPONDENT & LEGAL HEIR OF THE 1ST CR.PETITIONER.

---

1. DR.SOLOMON, S/O.JOSEPH, SHOP NO. XX/1986, ST.ANTONY'S HOEMO HALL, C.C.N.B.ROAD, MULLACKAL, ALAPPUZHA (DIED).

LEGAL HEIR IMPLEADED AS PER ORDER IN IA NO.1075/05 DTD.25.3.2006.

2. SHEEN SOLOMON, THEKKEPALACKAL, YMCA LANE, VAZHICHERY WARD, ALAPPUZHA.

BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL

RESPONDENTS/RESPONDENT &2ND APPELLANT & RESPONDENTS 2,4 & 5'/ PETITIONER & LEGAL HEIRS OF 1ST CR.PETITIONER:

---

1. DR.JAMES, S/O.ALEXANDER, ERRESSERIYIL, MULLACKAL WARD, ALAPPUZHA.

LEGAL HEIRS OF DR.SOLOMON IMPLEADED AS PER ORDER IN IA NO.1075/05).

2. SARAMMA SOLOMON, W/O.DR.SOLOMON, THEKKEPALACKAL HOUSE, YMCA LANE, VAZHICHERRY WARD, ALAPPUZHA.

3. SHIBU SOLOMON, THEKKEPALACKAL, YMCA LANE, VAZHICHERY WARD, ALAPPUZHA.

4. SUMAN TELES, THEKKEPALACKAL, YMCA LANE, VAZHICHERY WARD, ALAPPUZHA.

5. SEEMA ROSE, THEKKEPALACKAL,

YMCA LANE, VAZHICHERY WARD, ALAPPUZHA.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 27/11/2007 ALONG WITH RCR NO.352/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &
K.P.BALACHANDRAN, JJ.

R.C.R. NOS. 351 & 352 OF 2007

Dated 27th November, 2007.

ORDER

Balakrishnan Nair, J.

R.C.R.No.351/2007:

One of the legal heirs of the tenant is the revision petitioner. The 1st respondent is the landlord. The respondents 2 to 5 are the other legal heirs of the tenant.

2. The brief facts of the case are the following: The landlord filed the petition under Sections 11(2)(b), 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The Rent Controller allowed the petition under Section 11(3). The landlord did not appeal against the findings under Sections 11(2)(b) and 11 (4)(i) and those findings against the landlord have become final. The tenant appealed, challenging the finding against him under Section 11(3). The appeal was dismissed. Hence this revision.

3. The landlord is an Ophthalmologist. He retired from Government service. He is running a clinic in his car shed. He wants the petition

schedule building for its demolition and for construction of a building to house the clinic to be run by himself and his daughter. The petition was resisted, contending that the need urged is only a ruse to evict the tenant. There is no bona fide need for the landlord to get the building. Other contentions were also raised. As mentioned earlier, both the authorities concurrently held against the tenant and allowed eviction under Section 11 (3) of the Act.

4. The learned counsel for the revision petitioner attacked the findings of the authorities below, raising the following contentions. According to the learned counsel, since the building was required for reconstruction, the application should have been filed under Section 11(4)(iv). In that event, the tenant would have got some protection like re-induction etc. So, the petition filed under Section 11(3) is not maintainable. But, we notice that the landlord required the building for demolition and reconstruction. He wanted to shift his clinic to the building, after its reconstruction. It is well settled by several decisions of this Court that the landlord can get a building for demolition and for using the space occupied by it. He can also use the space for construction of a building for his own use. Therefore, the said contention cannot be accepted.

5. Secondly, it was contended that the petitioner's grand father took

the building in 1921 and therefore, the tenancy is one which commenced before 1.4.1940. So, the petitioner is entitled to get the protection of Section 11(17). But, recently, a five Judges Bench of this Court in **Prabhakaran v. Sulaikabi** [2007(2) KLT 103 (FB)] has held that the protection under Section 11(17) is only available to the original tenant and not to his legal heirs. Therefore, the said contention fails.

6. Thirdly, it was contended that going by the plan produced by the landlord for reconstruction, it would show that the proposed building is a residential building and not a hospital building and therefore, the need urged is not bona fide. Since the landlord wants to run only a clinic, a residential building will be sufficient for the said purpose. For that he need not construct a hospital building. The appellate authority has rightly dealt with the said contention and overruled the same, holding that a residential building will be sufficient to house the clinic.

7. The next point urged by the learned counsel for the revision petitioner is that one of the claims of the landlord was that he required the building for the use of his daughter also. But, it has come out in evidence that at the relevant time, the landlord's daughter was only a medical student and that she was not studying for Ophthalmology course. Therefore, the

need urged is not bona fide. But, the appellate authority rightly held that eviction is sought for the bona fide need of the landlord also. The landlord's need is even now surviving. So, his need is sufficient to sustain the application under Section 11(3).

8. The last point urged by the learned counsel for the petitioner is regarding the finding under the second limb of the second proviso to Section 11(3). According to him, no evidence was tendered by the landlord to the effect that suitable buildings were available in the locality. His mere assertion in the box is not sufficient to hold that buildings are available. But, we notice that the tenant also did not dispute the existence of buildings in the locality. His only contention was that the rent is prohibitive and premium also has to be paid. The appellate authority relying on the decision of this Court in **Ryru Vydiar v. Saseendran** [2003(1) KLT 367] held that higher rent or the necessity to pay premium cannot be be a ground to contend that rooms are not available in the locality. We are in agreement with the view taken by the appellate authority on this point. No other points were urged. In view of the above findings rendered by us on various contentions of the learned counsel for the petitioner, the Rent Control Revision fails and it is dismissed.

9. But, the learned counsel for the petitioner prayed for some time to

vacate the premises. The petitioner is granted six months' time, on condition he files an unconditional undertaking in the form of an affidavit before the executing court, withdrawing his contentions and undertaking to vacate the petition schedule room within six months from today. The affidavit in this regard shall be filed within three weeks from today. Arrears of rent, if any, remaining unpaid shall be cleared within one month from today. The monthly rent payable from time to time shall also be paid promptly till the scheduled room is vacated.

R.C.R.No.352/2007:

10. The grounds taken in this revision are also identical to those taken in R.C.R.No.351/2007. In view of the order in the said R.C.R., we are dismissing this revision also. In this case also, we grant the petitioners six months' time to vacate the premises, on condition they file an unconditional undertaking in the form of an affidavit before the executing court, withdrawing their contentions and undertaking to vacate the petition schedule room within six months from today. The affidavit in this regard shall be filed within three weeks from today. Arrears of rent, if any, remaining unpaid, shall be cleared within one month from today. The

monthly rent payable from time to time shall also be paid promptly till the scheduled room is vacated.

K.BALAKRISHNAN NAIR, JUDGE.

K.P.BALACHANDRAN, JUDGE.

Nm/